

MONTANA LEGISLATIVE HISTORY

Chapter 105 ~~19~~ 2005Bill H 482 S _____Original bill & history / CH. Committee on Bus. + Labor ✓Hearing Date(s) 2/5 / C2/11 / C

_____ C

_____ C

Date Out _____ C

S. Committee on Bus. + Labor ✓Hearing Date(s) 3/21 / C3/25 / C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes / No

Committee _____

Report _____

2003 Montana LegislatureAbout Bill -- Links

HOUSE BILL NO. 482
INTRODUCED BY FORRESTER, GLASER

AN ACT PROVIDING THAT A PROVISION IN A CONSTRUCTION CONTRACT THAT REQUIRES ONE PARTY TO THE CONTRACT TO INDEMNIFY ANOTHER PARTY TO THE CONTRACT, OR THE OTHER PARTY'S OFFICERS, EMPLOYEES, OR AGENTS, FOR THE OTHER PARTY'S LIABILITY, LOSSES, DAMAGES, OR COSTS IS VOID AS AGAINST THE PUBLIC POLICY OF THIS STATE; AUTHORIZING A CONSTRUCTION CONTRACT TO CONTAIN A PROVISION REQUIRING A PARTY TO A CONTRACT TO PURCHASE A PROJECT-SPECIFIC INSURANCE POLICY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Construction contract indemnification provisions. (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to

an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including any agreement to supply labor, materials, or equipment for an improvement to real property.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [section 1].

Section 3. Effective date -- applicability. [This act] is effective July 1, 2003, and applies to construction contracts entered into or renewed on or after July 1, 2003.

- END -

Latest Version of HB 482 (HB0482.ENR)

Processed for the Web on April 7, 2003 (3:37pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2003 Legislature](#) | [Leg. Branch Home](#)

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[Authorized print version w/line numbers \(PDF format\)](#)

Prepared by Montana Legislative Services

(406) 444-3064

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 5, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 501 (1/31/03); HB 438 (1/31/03);
HB 482 (1/31/03)

Closing by Sponsor:

The sponsor closed.

{Tape: 2; Side: A; Approx. Time Counter: 257 - 333}

HEARING ON HB 482

Sponsor: REP. GARY L. FORRESTER, HD 16, Billings

Opening Statement by Sponsor:

REP. FORRESTER read the title of the bill: An act providing that a provision in a construction contract that requires one party to the contract to indemnify another party to the contract, or the other party's officers, employees, or agents, for liability, losses, damages, or costs is void as against the public policy of this State; authorizing a construction contract to contain a provision requiring a party to a contract to purchase a project specific insurance policy.

{Tape: 2; Side: B; Approx. Time Counter: 333 - 353}

Proponents' Testimony:

Carl Schweitzer, ASAM, provided written testimony regarding insurance of a contractor and indemnification provisions for the Montana Department of Transportation.

EXHIBIT(buh25a05)

{Tape: 2; Side: A; Approx. Time Counter: 353 - Tape: 2; Side: B; Approx. Time Counter: 39; Comments: Side B was recorded before Side A}

Cary Hegreberg, Montana Contractors Association, said there should be greater concern for subcontractors than the general contractor.

{Tape: 2; Side: B; Approx. Time Counter: 40 - 64}

Dick Anderson, Dick Anderson Construction, said contractors should only insure what they control on construction projects.

{Tape: 2; Side: B; Approx. Time Counter: 64 - 89}

Jerry Cooper, representing himself, said the cost of a construction project insurance is deductible.

{Tape: 2; Side: B; Approx. Time Counter: 89 - 101}

Roger McGlenn, Executive Director, Independent Insurance Agents of Montana, said this bill is a moderate approach to the problem. Contractor availability policies are sometimes not available.
{Tape: 2; Side: B; Approx. Time Counter: 101 - 119}

Opponents' Testimony:

Jim Currie, Montana Department of Transportation, said their indemnification language in their contracts has remained the same since 1994 and it's worked well. There has not been an increase of costs. If this bill passes, it will cost the taxpayers money. Increased litigation costs, increased documentation costs, longer period of time for settlement are just a few of the concerns. The traveling public is going to be the entity who will suffer. If the goal is to provide the best product to the taxpayer for the least amount of money, this bill should die.
{Tape: 2; Side: B; Approx. Time Counter: 119 - 147}

Bill Gianoulis, Attorney at Law, Tort Claims for the State of Montana, said they oppose the bill because they believe it will cost the taxpayer more.
{Tape: 2; Side: B; Approx. Time Counter: 147 - 260}

Hal Luttschwager, Risk Manager, Missoula County, said they do not believe the current system is broken regarding contractual obligation. It may not function well on the insurance side.
{Tape: 2; Side: B; Approx. Time Counter: 260 - 284}

Shaun Bubb, Montana School Board Association, said the bill being presented has significant legal changes and legal implications for the school districts around Montana. Those legal changes will bring with it some financial recourse. He indicated he would be presenting written testimony.
{Tape: 2; Side: B; Approx. Time Counter: 284 - 298}

Doug Kaercher, Montana Association of Counties, said they oppose this bill.
{Tape: 2; Side: B; Approx. Time Counter: 298 - 305}

Informational Testimony:

Jacqueline Lenmark, American Insurance Association, said she was available for questions.

Al Smith, Montana Trial Lawyers Association, said he was available for questions.

Questions from Committee Members and Responses: None

Closing by Sponsor:

The sponsor closed.

{Tape: 2; Side: B; Approx. Time Counter: 371 - 428}

EXECUTIVE ACTION ON HB 332

{Tape: 3; Side: A; Approx. Time Counter: 1 - 400}

REP. STEINBEISSER reported on the subcommittee's work with HB 332 and HB 184.

Motion: REP. BERGREN moved HB 332 DO NOT PASS.

Motion/Vote: REP. KEANE made a SUBSTITUTE MOTION TO TABLE HB 332. A roll call vote was taken. Motion carried 16-2 with REPS. BERGREN, and WILSON voting no.

EXECUTIVE ACTION ON HB 184

Motion: REP. WILSON moved HB 184 DO PASS.

Motion/Vote: REP. WILSON moved HB 184 AMENDMENTS. Motion carried 18-0.

EXHIBIT(buh25a06)

Motion/Vote: REP. WILSON moved HB 184 DO PASS AS AMENDED. A roll call vote was taken. Motion carried 14-4 with REPS. MCKENNEY, STEINBEISSER, HAWK, and ROME voting no.

EXECUTIVE ACTION ON HB 501

Motion: REP. BOOKOUT-REINICKE moved HB 501 DO PASS.

Motion/Vote: REP. BOOKOUT-REINICKE moved HB 501 TECHNICAL AMENDMENT. Motion carried 18-0.

Motion: REP. BOOKOUT-REINICKE moved HB 501 DO PASS AS AMENDED.

Discussion:

REP. FRITZ opposed the bill.

- 11.1 Insurance, General: the Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the Work by the Contractor, its agents, employees, representatives, assigns, or subcontractors. The Contractor is responsible for all deductibles regardless of policy or level of coverage. The Owner reserves the right to demand, and the Contractor agrees to provide, copies of any and all policies at any time.
- 11.2 Hold Harmless and Indemnification: the Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and the Owner against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys' fees), and losses from any cause whatever (including patent, trademark and copyright infringement). This includes any suits, claims, actions, losses, costs, damages of any kind, including the State and Owner's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, actions, losses, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of the State or Owner if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of the Contractor in whole or in part.
- ~~11.3 Contractor's Insurance: insurance required under all sections herein shall be in effect~~
for the duration of the contract that extends through the warranty period. Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence any Work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- 11.3.1 Certificates of Insurance and Endorsements. All certificates of insurance and the additional insured **endorsements** are to be received by the state prior to issuance of the Notice to Proceed. The contractor is responsible to ensure that all policies and coverages contain the necessary endorsements for the State being listed as an additional insured. The state reserves the right to require complete copies of all insurance policies at any time to verify coverage. The contractor shall notify the state within 30 days of any material

Indemnification/Insurance Provision of MDT Contracts

SECTION IV: Contractor agrees to defend, protect, indemnify and save harmless the State of Montana and Department against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees), and losses to them from any cause whatever (including patent, trademark and copyright infringements) from the project. This includes any suits, claims, actions, losses, costs or damages of any kind, including the State's and Department's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, omissions or misconduct of Department's employees if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of Contractor's employees. The Contractor assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of its subcontractors, and the public. That responsibility includes all duties relating to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Scaffolding Act, Montana Safe Place to Work Statute, etc.) The indemnification stated above is expressly intended by the parties to include those claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees), and losses that are, or are alleged or held to be based upon a breach by the State or Department of a nondelegable duty relating to workplace safety for the Contractor's employees, the employees of any subcontractor's employees, and the public. This indemnification does not extend to CERCLA and CECRA claims, which are addressed in Standard Specification 107.26. Contractor will be responsible for any and all damages to property or persons that occur before final acceptance of the project. Contractor will obtain and maintain insurance necessary to comply with the Standard Specifications.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 2-5-03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT- REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK.	✓		
REP. KATHLEEN GALVIN- HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE

Date 2-5-03

Bill No. HB 482 Sponsor(s) _____

PLEASE PRINT

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Name and Address	Representing	Support	Oppose	Inf.
Burt Ball	D. A. (Administrative)		X	
Roger McWhirter	ITAM	X		
Paul Kuntzschewski	Missoula County		X	
Shawn Buttz	MSBA		X	
Dick Andersen	Self	X		
JERRY COOPER	SELF			
Carole Schweitzer	AFA	X		
Jim Currie	MT DOT		X	
Bill Gianoulas	PMTD		X	
Cory Hegelberg	Contractors ASSO	X		
Doug Kaercher	Hill Co./MACo		X	
Margaret Morgan	Ind. Elec. Contractors	X		
Al Smith	MTLHA			X
Jacqueline Bernmark	Am. Ins. Assn			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 11, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 525 (2/7/03); HB 536 (2/6/03);
HB 474 (2/6/03)
Executive Action: HB 307 Table; HB 119 Table; HB 438
Do Pass As Amend; HB 482 Do Pass;

EXECUTIVE ACTION ON HB 438

Motion: REP. MAEDJE moved HB 438 DO PASS.

Motion: REP. BITNEY moved HB 438 AMENDMENTS.
EXHIBIT(buh30a07)

Discussion:

REP. BITNEY discussed the amendments. EXHIBIT(buh30a08)

Mr. Campbell also discussed the amendments.

REP. MATTHEWS asked if the amendments had been discussed with the sponsor.

REP. ROME asked if these amendments were approved by the association.

Vote: A roll call vote was taken. Motion carried 18-0.

Motion: REP. MAEDJE moved HB 438 AMENDMENTS.

Discussion:

REPS. GALLIK, MORGAN, MATTHEWS opposed the amendments.

REP. MAEDJE supported these amendments.

Vote: A roll call vote was taken. Motion failed 1-17 with REP. MAEDJE voting yes.

Motion/Vote: REP. BITNEY moved HB 438 DO PASS AS AMENDED. A roll call vote was taken. Motion carried 17-1 with CHAIRMAN McKENNEY voting no.

EXECUTIVE ACTION ON HB 482

Motion/Vote: REP. BOOKOUT-REINICKE moved HB 482 DO PASS. A roll call vote was taken. Motion carried 14-4 with REPS. McKENNEY, GALLIK, HAWK, and MENDENHALL voting no.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 2-11-03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JOE MCKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT- REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN- HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

HOUSE OF REPRESENTATIVES

Roll Call Vote

BUSINESS AND LABOR COMMITTEE

DATE 2-11-03 BILL NO HB482 MOTION NO. 1
 MOTION: DO PASS

NAME	AYE	NO	ABSENTEE
REP. JOE MCKENNEY, CHAIR.		✓	
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT- REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK		✓	
REP. KATHLEEN GALVIN- HALCRO	✓		
REP. RAY HAWK		✓	
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL		✓	
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		



HOUSE STANDING COMMITTEE REPORT

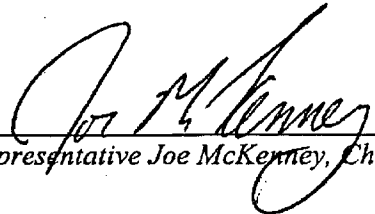
February 11, 2003

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Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 482** (first reading copy -- white) do pass.

Signed:


Representative Joe McKenney, Chair

- END -

Committee Vote:
Yes 14, No 4.

m. P. 2/11 1pm
301222SC.hhn

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 21, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Don Ryan (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 438, 2/24/2003; HB 482,
2/28/2003
Executive Action: HB 438

{Tape: 1; Side: A}

HEARING ON HB 482

Sponsor: REPRESENTATIVE GARY FORRESTER, HD 16, GARDINER

Proponents: Bob Pavlovich, IBEW 233; Carl Schweitzer, American Sub-Contractors Association of Montana; Earl Hanson, JTL Group, Inc.; Ed Murphy, Frontier West LLC; Chuck Olson, James Talcott Construction; Dennis Iverson, Montana Contractors Association; Margaret Morgan, Independent Electrical Contractors; Mick Brown, Brown Plumbing

Opponents: Bob Vogel, Montana School Boards Association

Informational Witnesses:

Brett Dahl, Department of Administration
Tim Reardon, Department of Transportation

Opening Statement by Sponsor:

REPRESENTATIVE GARY FORRESTER, HD 16, GARDINER, stated HB 482 is a bill to change the indemnification insurance clause for construction contracts. While it is a complex issue, it is one that affects a great deal of contractors and sub-contractors across the state.

Proponents' Testimony:

Bob Pavlovich, IBEW 233, offered his support for HB 482.

Carl Schweitzer, American Sub-Contractors Association of Montana, stated his organization asked REP. FORRESTER to bring this bill before the legislature. Mr. Schweitzer distributed a copy of an indemnification agreement, EXHIBIT (bus60a01). He gave an example of a construction contract between an owner and a general contractor. The general contractor will sign a contract with sub-contractors to build a project. One of the provisions seen in contracts is an indemnification clause, which means you are indemnifying someone for your poor work or mistakes. It states that if a person is negligent on the job, then he is not accountable for his negligence. If a general contractor has a sub-contractor sign this type of clause and a negligent act happens and perhaps they're both 50 percent responsible for that negligence, this clause puts all of the responsibility onto the sub-contractor. He doesn't believe that is fair. Each person should be responsible for their own negligence. Mr. Schweitzer went on to explain each section of the bill. He then said the cost of insurance is becoming prohibitive in the construction

business due to this type of indemnification. He asked the committee to take a hard look at this issue and vote in favor of it.

Earl Hanson, JTL Group, Inc., stated his company is in the position of writing a tremendous number of general contracts. He said he wrote the contract that the state has used over the last ten years. They don't put in the provision of sole liability, but they use the type of thinking the sub-contractors association wants in this bill. He encouraged the committee to approve the bill and follow in the steps of other states who have recognized the unfairness in the present law and went on to list the many states that have already changed their laws. **Mr. Hanson** further explained the passage of this bill would reduce the insurance costs of sub-contractors and even general contractors.

Ed Murphy, Frontier West LLC, supported the passage of HB 482, which he feels would bring fairness to contracts, would eliminate unreasonable indemnity terms, would put all parties on an equal playing field as well as make all parties responsible for their own negligence. Most of his company's contracts are with the Montana Department of Education. They are only responsible when they are 100 percent negligent. If there were a 100-day delay on a project, and the state caused a 99-day delay by its negligence, and the contractor or sub-contractor were one day late, the state would be totally immune from liability for breach of contract. The state would assert that the result was not solely caused by a negligent acts or omissions or misconduct of its employees. **Mr. Murphy** said that shows the ridiculous nature of such a provision. He asked the committee to help make sure unreasonable indemnity terms are eliminated in contracts. He closed by saying it is all about fairness.

Chuck Olson, James Talcott Construction, stressed that, as a general contractor, when they sign a contract, they are forced by contract to pass the issues of indemnification onto their sub-contractors. They don't think that indemnifying someone else for their actions is fair and equitable situation for everyone involved. He asked the committee if they would sign a contract with anyone making you responsible for their actions.

Dennis Iverson, Montana Contractors Association, offered his organization's support of HB 482 as well as that of **Byron Roberts, Building Industry Trades Association**. **Mr. Iverson** reminded the committee that both bills being heard this day had been heard last session and the session before. His association and the sub-contractor association disagreed strongly on the bills. He related that what happened in the interim was that his association and the sub-contractors worked out their differences

and the result is HB 482. He strongly support the bill and pointed out that if everyone on the job is indemnified, then the whole project is over insured, which translates to a cost added into the project. He felt it was more than a fairness issue, but also a good money-saving issue.

Margaret Morgan, Independent Electrical Contractors, which are both sub-contractors and businesses in Montana. They want to be responsible for their actions, but not anyone else's. She pointed out that it is very much a money issue. Insurance is a tremendous issue. Passage of this legislation would be a positive step toward solving it.

Mick Brown, Brown Plumbing, explained that insurance is one of the biggest issues facing everyone in the business today. He was glad to see the support of the industry for the bill as did he.

Opponents' Testimony:

Bob Vogel, Montana School Boards Association, expressed his organization's concerns over the implications of the bill for school districts in Montana. They are defined as a governmental entity in the bill. He didn't raise strong objections to the bill but didn't want to see unintended consequences for school districts in the process.

Informational Witness Testimony:

Brett Dahl, Department of Administration, notified the committee that there is a revised fiscal note on this bill. Initially, when this bill went through the House, the definition of governmental entity excluded the state; however the bill was intended to also apply to state government.

Tim Reardon, Department of Transportation, estimated that the owner's protection policy cost was about \$250K. He based that amount on a \$240M to \$250M construction program.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA wanted to know the intention of the House when they proposed the section **Mr. Schweitzer** asked the committee to take off. **Mr. Schweitzer** gave some history on the progress of the bill from the House and the Senate. The House Judiciary Committee took a look at it after Business and Labor had approved it.

{Tape: 1; Side: B}

His feeling was that this whole thing would open up a lot of mischief with no one understanding what it means. **SEN.**

COCCHIARELLA asked if he had seen the new fiscal note. **Mr.**

Schweitzer noted that there might be some insurance savings due to the fact that you wouldn't have to buy a rider on the policy.

Everyone would be responsible for their own negligence.

SEN. MIKE SPRAGUE asked **Mr. Vogel** if he had talked to **Lance Melton** about the legal ramifications. **Mr. Vogel** spoke with him briefly and will have **Mr. Melton** brief him later. The listing of schools as a government entity had not been caught and neither **Mr. Vogel** nor **Mr. Melton** had testified in the House.

SEN. SPRAGUE asked **Mr. Reardon** for a third party indemnification explanation. **Mr. Reardon** stated that the problem for sub-contractors is that the insurance industry is forcing the prime contractor to pass down that same language on indemnification to the sub-contractors. Small contractors are unable to get the coverage at a decent cost or not at all.

SEN. SPRAGUE asked **Mr. Dahl** if he believes there is an overlapping consequence and fairness issue here. **SEN. SPRAGUE** gave the example of a small contractor coming on at the end of a multi-million dollar contract to do some work for a few thousand dollars and having to have insurance for the whole amount of the project. **Mr. Dahl** replied that the difficulty with construction contracts is the activities that give rise to the liabilities are varied. With the current system and the way the state is insured, they are covered by the contractor's insurance policy. It had never been brought to his attention that there was a problem with any sub-contractors or contractors or insurance costs. He attributed the problem to 9-11, nationwide claims for mold and other issues as well as a falling stock market with insurance companies being heavy investors in it.

Closing by Sponsor:

REP. FORRESTER discussed some of the items in the revised fiscal note, which he received late yesterday. He is a small drywall contractor in Billings and related his experience with insurance and indemnification issues. At the present time, it is almost impossible to obtain this type of insurance in Montana. **REP. FORRESTER** stated this is a fairness bill.

from: Carl
Schweitzer,
American Sub-
Contractors Assoc of MT

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 3/21/03
BILL NO. HB482

- 11.1 Insurance, General: the Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the Work by the Contractor, its agents, employees, representatives, assigns, or subcontractors. The Contractor is responsible for all deductibles regardless of policy or level of coverage. The Owner reserves the right to demand, and the Contractor agrees to provide, copies of any and all policies at any time.
- 11.2 Hold Harmless and Indemnification: the Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and the Owner against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys' fees), and losses from any cause whatever (including patent, trademark and copyright infringement). This includes any suits, claims, actions, losses, costs, damages of any kind, including the State and Owner's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, actions, losses, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of the State or Owner if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of the Contractor in whole or in part.
- ~~11.3 Contractor's Insurance: insurance required under all sections herein shall be in effect~~
for the duration of the contract that extends through the warranty period. Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence any Work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- 11.3.1 Certificates of Insurance and Endorsements. All certificates of insurance and the additional insured **endorsements** are to be received by the state prior to issuance of the Notice to Proceed. The contractor is responsible to ensure that all policies and coverages contain the necessary endorsements for the State being listed as an additional insured. The state reserves the right to require complete copies of all insurance policies at any time to verify coverage. The contractor shall notify the state within 30 days of any material

**MONTANA SENATE
2003 LEGISLATURE
BUSINESS & LABOR COMMITTEE
ATTENDANCE**

DATE: *March 21, 2003*

NAME	PRESENT	EXCUSED	ABSENT
SENATOR DALE MAHLUM, CHAIR	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR SHERM ANDERSON	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR KELLY GEBHARDT	✓		
SENATOR BOB KEENAN		✓	
SENATOR SAM KITZENBERG	✓		
SENATOR KEN HANSEN	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN		✓	
SENATOR CAROLYN SQUIRES	✓		
SENATOR FRED THOMAS		✓	

DATE 3/21/03SENATE COMMITTEE ON Business & LaborBILLS BEING HEARD TODAY: HB 438, HB 482**PLEASE PRINT**

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
CLARK OTSOU	406-761-0018	JAMES TALCOTTONS	438 482	☒	☐
EAD HANSON	406-255-7133	JTL Group, Inc.	482	☒	☐
Ed Murphy	406-728-8499	Frontier West	482	☒	☐
Caro Schwitzer	443-8774	AS Am APHe	438 438	☒	☐
Mick Brown	656-8585	Brown Plumbing (ALCS)	482 438	☒	☐
Margaret Morgan	431-9836	Independent Elec. Contractors	438 482	☒	☐
ROBERT PARLOUKIT	782-4507	IBEW 233	438 482	☒	☐
Brett Dell	406-444-3687	Administration	438	☐	☐
Jim Reardon		Dept of Trans.		☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **SENATOR SHERM ANDERSON**, on March 25, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Dale Mahlum, Chairman (R)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 555, 2/24/2003; HB 577,
2/24/2003; HB 588, 2/28/2003; HB
667, 3/17/2003
Executive Action: HB 555, HB 588, HB 385, HB 482

Closing by Sponsor:

REP. HARRIS closed by stating they would be offering an amendment which would create a bill with very good criminal and civil provisions and a definition of a Ponzi scheme.

EXECUTIVE ACTION ON HB 385

Motion: SEN. COCCHIARELLA moved that HB 385 BE CONCURRED IN.

Discussion:

Eddye McClure, Legislative Staffer, explained the amendments to the committee (HB038501.aem) EXHIBIT(bus63a03).

Vote: Motion carried 9-0.

Motion: SEN. COCCHIARELLA moved that HB 385 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. ROUSH asked if this bill deals specifically with new vehicles.

Eddye McClure said yes.

Vote: Motion carried 9-0.

EXECUTIVE ACTION ON HB 482

Motion: SEN. MAHLUM moved that HB 482 BE CONCURRED IN.

Discussion:

CHAIRMAN DALE MAHLUM told the committee he talked to Carl Schweitzer, American Sub-Contractors Association of Montana, who asked that an amendment not be put on the bill regarding a third party.

SENATE COMMITTEE ON BUSINESS AND LABOR

March 25, 2003

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SEN. COCCHIARELLA expressed concern about how insurance can be obtained when there is a third-party issue.

Vote: Motion that HB 482 BE CONCURRED IN carried 5-4; with SENS. COCCHIARELLA, KITZENBERG, ROUSH, and SQUIRES voting NO.

**MONTANA SENATE
2003 LEGISLATURE
BUSINESS & LABOR COMMITTEE
ATTENDANCE**

DATE: *March 25, 2003*

NAME	PRESENT	EXCUSED	ABSENT
SENATOR DALE MAHLUM, CHAIR		✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR SHERM ANDERSON	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR KELLY GEBHARDT	✓		
SENATOR BOB KEENAN		✓	
SENATOR SAM KITZENBERG	✓		
SENATOR KEN HANSEN	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN		✓	
SENATOR CAROLYN SQUIRES		✓	
SENATOR FRED THOMAS		✓	

MONTANA SENATE
2003 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE: *March 25, 2003* BILL NO. *HB482*

MOTION: *Sen. Mahlum moved that HB482 be concurred in. Sen. Glaser will carry the bill*

NAME	AYE	NO
SENATOR DALE MAHLUM, CHAIR	✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓	
SENATOR SHERM ANDERSON	✓	
SENATOR VICKI COCCHIARELLA		✓
SENATOR KELLY GEBHARDT	✓	
SENATOR KEN HANSEN	✓	
SENATOR BOB KEENAN		
SENATOR SAM KITZENBERG		✓
SENATOR GLENN ROUSH		✓
SENATOR DON RYAN		
SENATOR CAROLYN SQUIRES		✓
SENATOR FRED THOMAS		

5-4 in favor



SENATE STANDING COMMITTEE REPORT

March 25, 2003

Page 1 of 1

Mr. President:

We, your committee on **Business and Labor** recommend that **House Bill 482** (third reading copy -- blue) be concurred in.

Signed: _____

A handwritten signature in cursive script, appearing to read "D. Mahlum", is written over a horizontal line.

Senator Dale Mahlum, Chair

To be carried by Senator Bill Glaser

- END -

Committee Vote:

Yes 5, No 4.

631238SC.ssc

Handwritten initials, possibly "BG", are located in the bottom right corner of the page.